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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,410	09/26/2006	Shaow Lin	DC10102 PCT1	9220

137 7590 09/17/2008  
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EXAMINER
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LOEWE, ROBERT S

ART UNIT	PAPER NUMBER
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1796

NOTIFICATION DATE	DELIVERY MODE
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09/17/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents.admin@dowcorning.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,410	<b>Applicant(s)</b> LIN, SHAOW	
	<b>Examiner</b> ROBERT LOEWE	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3,4,7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,4,7 and 9 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/13/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's arguments/remarks, filed on 8/6/08, have been fully acknowledged.

#### ***Terminal Disclaimer***

The terminal disclaimer filed on 8/6/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/592,399 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Claim Objections***

Claim 8 is objected to since it is dependent on a cancelled claim and will not be treated on its merits. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3, 4, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cen et al. (US Pat. 6,632,420, which is cited the PTO-892 form from the previous Office action).

Claims 3 and 4: Cen et al. teaches a process for making a clear personal care product in the form of a microemulsion (claim 38 of Cen et al.) comprising mixing 10 to 50% by weight of water (6:59), preferably between 10 to 30% by weight of an alcohol (6:65-67) such as ethanol (6:61), and 1 to 20% by weight of a silicone polyether (5:21-23) which satisfies all of the structural limitations of component (A) of instant claim 3 (4:37-5:23). Further, the sum of the

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weight % of components (A), (B) and (C) may be equal to 100% through normalization-that is to say, components (A), (B) and (C), present at any weight percent, can be normalized such that the sum of the weight % of components (A), (B) and (C) equals 100%. This limitation does not limit the microemulsion composition as only containing ingredients (A), (B) and (C), as instant claim 3 allows for other components to be present. Because Cen et al. teaches combining components (A), (B) and (C) in the amounts required by instant claim 3, it follows that the combination of components (A), (B) and (C) will inherently form an aqueous dispersion of the silicone polyether copolymer. Cen et al. further teaches mixing the ingredients to form a microemulsion. Because Cen et al. teaches the claimed ingredients of instant claim 3 in the claimed amounts, and further teaches the process limitations of instant claim 3, it follows that the process taught by Cen et al. is capable of forming vesicles. The courts have stated that "Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established.

Claims 7 and 9: Cen et al. teaches a personal care product comprising the microemulsion of instant claims 3 and 4.

### ***Response to Arguments***

Applicant's arguments with respect to claims 3, 4 and 7-9 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT LOEWE whose telephone number is (571)270-3298. The examiner can normally be reached on Monday through Friday from 5:30 AM to 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L./

Examiner, Art Unit 1796

22-Aug-08

/Randy Gulakowski/

Supervisory Patent Examiner, Art Unit 1796